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## **Equal Employment Opportunity Commission v. Rayna Enterprises, Inc. d/b/a Arriba Mexican Grill, an Arizona Corporation**

Judge Mary H. Murguia

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## **Equal Employment Opportunity Commission v. Rayna Enterprises, Inc. d/b/a Arriba Mexican Grill, an Arizona Corporation**

### **Keywords**

Equal Employment Opportunity Commission, E.E.O.C., EEOC, Rayna Enterprises Inc., Arriba Mexican Grill, Service, Constructive Discharge, Hostile Work Environment, Retaliation, Disparate Treatment, Employment Law, Title VII, Consent Decree, CIV 04-2056 PHX MHM

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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA

9 Equal Employment Opportunity  
10 Commission

11 Plaintiff,

12 vs.

13 Rayna Enterprises, Inc. d/b/a Arriba  
14 Mexican Grill, an Arizona corporation

15 Defendant.

**CIV 04-2056 PHX MHM**

**CONSENT DECREE**

16 The Equal Employment Opportunity Commission ("EEOC" or "Commission")  
17 filed this action against Rayna Enterprises ("Rayna" or "Defendant") on October 4,  
18 2004, in this Court, to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
19 §2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the  
20 Complaint, the Commission alleged that Rayna discriminated against and harassed  
21 Marylillian Aragon and a class of similarly situated women on the basis of sex,  
22 female, constructively discharged the class of women, and retaliated against Ms.  
23 Aragon after she complained about the discrimination, in violation of Title VII.

24 Rayna denies all allegations raised in the complaint, nor does anything in this  
25 decree constitute an admission of liability on the part of Rayna.

26 The Parties do not object to the jurisdiction of the Court over this action and  
27 waive their rights to a hearing and the entry of findings of fact and conclusions of  
28 law. The parties agree that this Consent Decree is fair, reasonable, and equitable

1 and does not violate the law or public policy.

2 In the interest of resolving this matter, and as a result of having engaged in  
3 comprehensive settlement negotiations, the Commission and Rayna have agreed  
4 that this action should be finally resolved by entry of this Consent Decree.

5 It is **ORDERED, ADJUDGED AND DECREED:**

6 1. This Decree resolves all claims arising out of the issues between the  
7 Commission and Defendant Rayna in this lawsuit, including without limitation, back  
8 pay, compensatory and punitive damages, injunctive relief, costs, and attorney fees.

9 2. Defendant and its officers, agents, employees, successors, and assigns  
10 both at the time that this Decree becomes effective and for the duration of this  
11 Decree agree to comply with Federal law and agree not to : (a) discriminate against  
12 any employee on the basis of sex, (b) harass any employee based on sex; (c)  
13 retaliate against any employee because he or she: (i) opposes or opposed  
14 discriminatory practices made unlawful by Title VII; (ii) files or filed a charge of  
15 discrimination or assists, assisted, participates, or participated in the filing of a  
16 charge of discrimination; or (iii) assists, assisted, participates or participated in an  
17 investigation or proceeding brought under the federal or state laws prohibiting  
18 discrimination or retaliation; and (d) alter the terms and conditions of any employee's  
19 employment because of sex to the extent required by Federal law.

20 **MONETARY RELIEF**

21 3. Rayna Enterprises shall pay, by check or money order, the total amount  
22 of \$ 65,000 within seven (7) days from the date of the entry of this Decree, to be  
23 distributed to Maryillian Aragon, Immy Arnal, Laura Hulcher and Michelle Deal as  
24 articulated in Attachment A. Rayna will not condition the receipt of individual relief  
25 on Mss. Aragon's, Arnal's, Hulcher's or Deal's agreements to (a) maintain as  
26 confidential the terms of this Decree, or (b) waive their statutory rights to file a  
27 charge with any federal or state anti-discrimination agency. Rayna will issue  
28 applicable United States Internal Revenue Service Forms to Mss. Aragon, Arnal,  
Hulcher and Deal for all such payments on or before January 31, 2006.

4. The checks or money orders provided for in paragraph 3 of this Decree shall be mailed directly by Rayna to Mss. Aragon, Arnal, Hulcher and Deal at the addresses supplied by the Commission. Within three business days of the issuance of the checks, Rayna shall submit a copy of the checks and related correspondence to the United States Equal Employment Opportunity Commission, Regional Attorney, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

### OTHER RELIEF

5. Defendant will institute and carry out policies and practices at its Arizona restaurants that help assure a work environment free from sex-based discrimination, harassment and retaliation for its employees; that allow employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived or actual, made unlawful by Title VII; and that provide procedures for employees to report incidents of sex-based discrimination, harassment and retaliation.

6. To assist Defendant in achieving and maintaining compliance in the area of anti-discrimination and equal employment opportunity, within 30 (thirty) days of the entry of the Decree, Defendant's President will appoint an appropriate and qualified employee to be responsible for (a) reviewing and revising Defendant's anti-discrimination policies; (b) reviewing and revising Defendant's procedures with respect to responding to and keeping records regarding complaints received; (c) receiving and investigating complaints of discrimination; (d) evaluating and, if appropriate, disciplining or terminating employees for violation of Defendant's anti-discrimination policies; (e) evaluating employees in the area of anti-discrimination/equal employment opportunity policies; and (f) preparing reports to the Commission, as required by this Decree.

7. Annually for the duration of this Decree, Defendant will provide training which shall explain: (1) what constitutes sex-based discrimination, retaliation, and harassment; (2) that Title VII prohibits this misconduct; (3) how to prevent this misconduct; (4) to whom employees may complain if they feel they have been

1 subjected to this misconduct; and (5) that managers will be evaluated on their  
2 enforcement of Rayna's anti-discrimination policies. Training will also include an  
3 explanation of Rayna's policies regarding sex-based discrimination, harassment and  
4 retaliation; the importance of maintaining an environment free from harassment; and  
5 the discipline that may be taken against any employee found to have harassed or  
6 retaliated against other employees and the managers or supervisors who are found  
7 to have allowed the harassment or retaliation to occur.

8         a. Defendant will arrange and be financially responsible for a  
9 consultant/lecturer(s), who will provide consultation and a training session for all of  
10 its employees in Arizona. The training session(s) shall be provided by the  
11 consultant/lecturer(s). Defendant shall obtain the EEOC's approval of the consultant  
12 by providing the name and resume of the consultant at least sixty days prior to the  
13 first training session. Defendant may videotape the session for those employees  
14 who cannot attend the live session.

15         b. During the live training session(s), Defendant's President will  
16 speak to the employees about the discipline that can be taken against supervisors,  
17 managers and employees who commit acts of discrimination, harassment or  
18 retaliation or allow discrimination, harassment or retaliation to occur in the  
19 workplace; the importance of maintaining an environment free of discrimination; and  
20 Defendant's anti-discrimination policies.

21         c. The seminar training session shall be at least three (3) hours in  
22 length, including thirty (30) minutes for questions and answers. All of Defendant's  
23 employees, including managers, shall register for and attend the seminar session.  
24 Employees who are unable to attend the session may watch a videotape of it.

25         d. Employees shall sign a registry when they attend the training or  
26 watch the videotape. Defendant shall keep, for the duration of the Decree, this  
27 written record of all employees who attend the training or watch it on video.

28         e. The first seminar training session shall be held within four months  
of the Consent Decree being entered.

1 f. Rayna will also provide a one-hour training session, to Rayna's  
2 managers and supervisors within six (6) months of the execution of this Agreement  
3 which shall discuss sex-based discrimination, harassment and retaliation. Rayna will  
4 notify the Commission when this training session has been completed. Defendant  
5 shall obtain the EEOC's approval of the consultant by providing the name and  
6 resume of the expert at least sixty days prior to the first training session.

7 8. Within thirty days of the entry of this Decree, Defendant will review and  
8 revise its written policies concerning discrimination and retaliation to conform with  
9 the law. Defendant's written policies must include, at a minimum:

- 10 a. A clear and strong commitment to a workplace free of sex-based  
11 discrimination, harassment and retaliation;
- 12 b. A clear and strong message of encouragement to persons who  
13 believe they have been discriminated against to come forward;
- 14 c. A description of the consequences, up to and including  
15 termination, that will be imposed upon violators of the policy;
- 16 d. An assurance of non-retaliation for persons who believe they  
17 have been discriminated against and for witnesses;
- 18 e. That discrimination on the basis of sex by anyone, including  
19 management officials, supervisors, vendors, suppliers, third  
20 parties and customers, is prohibited and will not be tolerated;
- 21 f. The identification of specific alternative individuals, including  
22 managers with their telephone numbers, to whom employees  
23 who have been subjected to sex-based discrimination,  
24 harassment or retaliation can report the discrimination and who  
25 have the authority to investigate allegations of discrimination in  
26 a neutral and confidential manner;
- 27 g. A written statement that an employee may report the harassment  
28 to a designated person outside of his or her chain of  
management should the employee prefer to do so;

1 h. Assurances that Defendant will investigate allegations of sex-  
2 based discrimination, harassment and retaliation promptly, fairly,  
3 reasonably, effectively and as confidentially as possible under  
4 the circumstances, by appropriate investigators and that  
5 appropriate corrective action and appropriate follow-up will be  
6 taken by Defendant to make victims whole and to eradicate the  
7 discrimination; and

8 i. Information regarding the employee's right to file a charge of  
9 discrimination with the EEOC, including contact telephone  
10 numbers, TDY/TDD and addresses for the EEOC.

11 9 These policies shall be posted in a prominent location, frequented by  
12 employees, at each of Defendant's restaurants in Arizona. These policies shall also  
13 be distributed to each current employee within thirty days of the entry of the Decree,  
14 and distributed to all new employees when hired.

15 10 Defendant shall promptly and appropriately investigate all complaints  
16 of sex-based discrimination, harassment or retaliation. The investigation must  
17 include a finding of whether discrimination occurred; a credibility assessment;  
18 interviews of all potential victims and witnesses identified; and concurrent notes of  
19 the investigation. Defendant shall take immediate appropriate corrective action to  
20 make discrimination victims whole, to discipline violators, and to eradicate the  
21 discrimination. Defendant shall follow up with complainants at appropriate intervals  
22 to ensure that the harassment, discrimination or retaliation does not reoccur.

#### 23 APOLOGY

24 11. Within fourteen (14) days of the entry of the Decree, Defendant's  
25 President shall prepare and mail a letter of apology to Mss. Aragon, Arnal, Hulcher  
26 and Deal, as attached as Attachment B.

#### 27 NOTICE

28 12. Defendant will post the Notice attached as Attachment C at each of  
Defendant's restaurants in Arizona. The Notice will be posted in an appropriate



1 place frequented by employees, for the duration of this Decree. The Notice, which  
2 shall be posted in both English and Spanish, shall be the same type, size, and style  
3 as Attachment C.

4 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

5 13 In addition to the reporting specified throughout the Decree above,  
6 Defendant shall report in writing and in affidavit form to the Regional Attorney of  
7 the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690,  
8 Phoenix, Arizona 85012, beginning six months from the date of the entry of this  
9 Decree, and thereafter every six months for the duration of the Decree  
10 confirmation that: (i) the Notice required in paragraph 12 of this Decree was  
11 posted and the location(s) where it was posted; (ii) the policies required in  
12 paragraph 9 were distributed to each current and new employee and posted; and  
13 (III) the apology required in paragraph 11 was sent to Mss. Aragon, Arnal,  
14 Hulcher and Deal.

15 14. The parties shall bear their own attorneys' fees and costs incurred in  
16 this action up to the date of entry of this Decree.

17 **FORCE AND EFFECT**

18 15. The duration of this Decree shall be thirty-six (36) months from its  
19 entry. This Court shall retain jurisdiction over this action for the duration of the  
20 Decree, during which the Commission may petition this Court for compliance with  
21 this Decree. Should the Court determine that defendant has not complied with  
22 this Decree, appropriate relief, including extension of this Decree for such period  
23 as may be necessary to remedy its non-compliance, may be ordered. Absent  
24 extension, this Decree shall expire by its own terms at the end of 36 months from  
the date of entry, without further action by the Parties.

25 16. The parties agree to the entry of this Decree subject to final approval  
26 by the Court.

1 DATED this 17<sup>th</sup> day of January, 2005.

2  
3  
4 Mary H. Murgia  
United States District Judge

5  
6 APPROVED AND CONSENTED TO BY:

7  
8  
9 [Signature]  
10 CORPORATE OFFICER  
Rayna Enterprises, Inc.

11 Mary Jo O'Neill  
12 MARY JO O'NEILL  
Regional Attorney

13 Sharon Moyer  
14 SHARON S. MOYER  
15 MARK D. DILLON  
16 Sacks Tierney P.A.  
4250 North Drinkwater Blvd.  
4<sup>th</sup> Floor  
Scottsdale, AZ 85251-3693

17 C. Emanuel Smith  
18 C. EMANUEL SMITH  
Supervisory Trial Attorney

19 Attorneys for Defendant

20 Sally C. Shanley  
21 SALLY C. SHANLEY  
22 Trial Attorney

23 EQUAL EMPLOYMENT  
24 OPPORTUNITY COMMISSION  
25 Phoenix District Office  
26 3300 North Central Ave., Ste. 690  
27 Phoenix, Arizona 85012

28 Attorneys for Plaintiff

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APPROVED AND CONSENTED TO BY:

/s/ Raymond Perry  
CORPORATE OFFICER  
Rayna Enterprises, Inc.

/s/ Mary Jo O'Neill  
MARY JO O'NEILL  
Regional Attorney

/s/ Sharon Moyer  
SHARON S. MOYER  
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SALLY C. SHANLEY  
Trial Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Phoenix District Office  
3300 North Central Ave., Ste. 690  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

## ATTACHMENT A

NAME	AMOUNT
Marylillian Aragon	\$20,000.00
Immaculata Arnal	\$20,000.00
Michelle Deal	\$12,500.00
Laura Hulcher	\$12,500.00
<b>TOTAL</b>	<b>\$65,000.00</b>

## ATTACHMENT B

[Rayna Letterhead]

[Date]

[address]:

As you are aware, a lawsuit was filed by the Equal Employment Opportunity Commission against Rayna Enterprises on September 30, 2004, alleging that it discriminated against a number of employees by subjecting them to sexual harassment and retaliating against one employee when she complained.

Please accept my sincere apology on behalf of Rayna Enterprises and its management team for any failure in our efforts to maintain a workplace free of sexual harassment and retaliation. We are committed to creating and maintaining an environment where no employee must endure harassment based on his or her sex, or suffer retaliation for bringing grievances to our attention. Please be assured that we are investigating our policies and procedures with regard to sexual harassment and retaliation and will correct any and all deficiencies.

Sincerely,

Raymond Perry  
President, Rayna Enterprises

## ATTACHMENT C

### NOTICE TO ALL EMPLOYEES OF RAYNA ENTERPRISES

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, or other verbal or physical conduct directed at a person because of her/his sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC or the Arizona Civil Rights Division (ACRD).

Rayna shall not discriminate against any employee on the basis of sex, including sexual harassment, and shall not retaliate against any employee for complaining about sexual discrimination or harassment.

If you believe you have been discriminated against or sexually harassed Rayna encourages you to report any concerns of harassment, discrimination or retaliation to any management official.

You also have a right to seek assistance from:

- (1) EEOC  
3300 North Central Ave., Suite 690  
Phoenix, Arizona 85012  
Telephone: (602) 640-5000  
TTY: (602) 640-5072  
Website (national): [www.eeoc.gov](http://www.eeoc.gov); or

- (2) Arizona Civil Rights Division (ACRD)  
Attorney General's Office  
1275 W. Washington  
Phoenix, Arizona, 85007  
(602) 255-5263.

You have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against, retaliated against or sexually harassed.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official of Rayna for: (1) opposing sexual harassment or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD at the addresses or telephone numbers listed above.